

2:15-cv-01045-RFB-BNW

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3
4 CUNG LE, et al.,)

5 Plaintiffs,)

6 vs.)

7 ZUFFA, LLC, d/b/a Ultimate
8 Fighting Championship and
UFC,)

9 Defendants.)

Case No. 2:15-cv-01045-RFB-BNW

Las Vegas, Nevada

Friday, January 19, 2024

8:21 a.m.

STATUS CONFERENCE

C E R T I F I E D C O P Y

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11
12
13 REPORTER'S TRANSCRIPT OF PROCEEDINGS

14 THE HONORABLE RICHARD F. BOULWARE, II,
15 UNITED STATES DISTRICT JUDGE
16
17
18

19 APPEARANCES: See Pages 2 and 3
20

21 COURT REPORTER: Patricia L. Ganci, RMR, CRR
22 United States District Court
23 333 Las Vegas Boulevard South, Room 1334
Las Vegas, Nevada 89101
24

25 Proceedings reported by machine shorthand, transcript produced
by computer-aided transcription.

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1 LAS VEGAS, NEVADA; FRIDAY, JANUARY 19, 2024; 8:21 A.M.

2 --oOo--

3 P R O C E E D I N G S

4 THE COURT: Please be seated.

5 COURTROOM ADMINISTRATOR: Le versus Zuffa,
6 15-cv-1045-RFB-BNW. Counsel, please make your appearances.

7 MR. CRAMER: Good morning, Your Honor. Eric Cramer for
8 the plaintiffs.

9 MR. BROWN: Benjamin Brown for the plaintiffs.

10 MR. SPRINGMEYER: Good morning, Your Honor. Don
11 Springmeyer for the plaintiffs.

12 MR. YOUNG: Good morning, Your Honor. Christopher
13 Young for the plaintiffs.

14 MR. POMERANTZ: Good morning, Your Honor. Crane
15 Pomerantz for the plaintiffs.

16 THE COURT: Good morning.

17 MR. WILLIAMS: And good morning, Your Honor. Colby
18 Williams of Campbell and Williams on behalf of Zuffa, LLC.

19 MR. YATES: Chris Yates of Latham and Watkins for
20 Zuffa, LLC.

21 MR. MIRKOVICH: Samuel Mirkovich on behalf of
22 defendants.

23 THE COURT: Good morning. So I assume you all have
24 seen my order. And so I want to take care of a few things
25 today. I first want to take care of the motions to seal. There

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1 is, I think, a few joint motions to unseal and a few motions to
2 seal here. I'm inclined to go ahead and just approve those
3 motions.

4 Any reason why I can't go ahead and approve the joint
5 motions to seal and unseal?

6 MR. CRAMER: We don't think so, Your Honor.

7 MR. WILLIAMS: No, Your Honor.

8 THE COURT: Okay. All right. Thank you, Mr. Williams.
9 So I'll go ahead and grant the motions to unseal and then grant
10 the joint motions to seal.

11 So, I want to turn to the issue that I have said in my
12 order related to Mr. Davis's expert report. And I know,
13 Mr. Cramer, you all didn't even technically respond to the
14 substance of the report because you filed the motion to strike.
15 So I think the way to approach this would be to allow you to
16 respond, but I wanted to talk a little bit more about that in
17 the context of, also, the trial and the schedule that you all
18 had proposed.

19 So, Mr. Cramer, I'm going to start with you. I assume
20 that you would want to have some opportunity to be able to
21 respond. And then I would want to contemplate whether or not I
22 would set a hearing like I did with the other experts and then
23 have plaintiffs' expert come in and defense expert come in and
24 then make an evaluation, which I did previously as it relates to
25 experts. And then we just would have to fold that into our

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1 schedule.

2 But, Mr. Cramer, your thoughts about that approach.

3 MR. CRAMER: Your Honor, to be clear, and I think there
4 was some confusion in this because Zuffa went ahead and filed
5 Daubert motions that they'd already filed, but they filed a
6 Daubert motion as to our expert, Mr. Guy Davis, in 2018. We
7 responded and they replied. So it's been fully briefed.

8 THE COURT: It has been. I just didn't know if you
9 wanted to respond again. So that's --

10 MR. CRAMER: Oh, I see. Okay. Appreciate it.

11 THE COURT: There was a new motion that was filed. It
12 was renewed. And so then the question is, since it was renewed,
13 I didn't do a direct comparison of the old and the new motions.
14 I first looked at the motion to exclude and my prior order to
15 see whether or not it would cover this particular expert, which
16 I don't think that it does. And so then I was going to give you
17 an opportunity to be able to respond.

18 If you think that the -- your prior response is
19 sufficient, then we can simply proceed to me considering that as
20 your response to the renewed motion and then potentially setting
21 a hearing as it relates to that in this case before any trial.

22 MR. CRAMER: Let me say, Your Honor, if I could say one
23 thing about the Davises. We have a Davis, Guy Davis. They have
24 a Davis, Elizabeth Kroger Davis.

25 THE COURT: Right.

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1 MR. CRAMER: Our view is our Davis opining upon whether
2 Zuffa could have paid the damages that our experts say they
3 would have paid or fighter compensation that our experts say
4 they would have paid in the but-for world, our view is that our
5 Davis is relevant only because Zuffa put it at issue. Zuffa
6 argues through their Davis and in other ways -- they plead
7 poverty. They say, "We could not have paid the extra several
8 hundred millions to the fighters during the class period.
9 Therefore, the damages are unreasonable."

10 Our view is we get to respond to that by way of an
11 expert who says, "Oh, yes they could have. They just didn't
12 have to distribute \$1.2 billion to their three owners and take
13 on additional debt and debt service. They still would have been
14 a very profitable company."

15 But the deal we would be willing to make is if Zuffa
16 agrees not to plead poverty, not to make the --

17 THE COURT: Mr. Cramer, I'm sorry. I don't mean to
18 laugh. I'm happy to ask Mr. Williams that or Mr. Yates that. I
19 would be shocked if they were to go to a trial in this case and
20 say, "We could have paid all of this money and we just decided
21 not to," with all due respect. So we can dispose of this fairly
22 quickly, at least that issue.

23 Mr. Williams, I would imagine in all seriousness that
24 one of the arguments that you and your team would make on behalf
25 of your client is that there were financial constraints on the

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1 fighters' compensation, and this was -- notwithstanding
2 percentages and the share of the revenue that there may be in
3 other sports, this was basically the best that they could have
4 done given the financial constraints.

5 MR. WILLIAMS: Correct, Your Honor.

6 THE COURT: Okay.

7 So then it seems to me, Mr. Cramer, part of what I'm
8 inclined to do also I have to tell you is it seems like the
9 Davises, let's just refer to them that way, their expert
10 testimony really depends upon the nature of how the testimony
11 comes in, right. So their testimony isn't the same as some of
12 the other experts who are relying upon particular modeling or
13 econometrics. They're basically looking at different aspects of
14 the financials for the defendant and making some determinations
15 about what could or couldn't be paid. And so I have to tell you
16 I'm inclined to wait to rule on the Davises until I see what the
17 trial briefs actually are.

18 So, Mr. Williams, again, I'm going to ask you this
19 question, which is it seems to me that there are different ways
20 to make the argument that I just asked you about. And I would
21 imagine, though, one of the ways that the defendant would do
22 that would be to have an expert come on or CFO or whomever --

23 MR. WILLIAMS: Right.

24 THE COURT: -- testify about this is what were our
25 structural limits. So I want you to respond to Mr. Cramer as it

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1 relates to Mr. Guy Davis as a rebuttal expert, because part of,
2 I think, what you all are going -- is it going to be you,
3 Mr. Yates? I don't care -- part of what I think you were
4 objecting to is a hypothetical, but potentially what happens
5 when you put on your case is you could open the door to some
6 discussion about, "Well, they could have done this had this
7 happened."

8 And so I agree with portions of your brief that say,
9 "Look, you know, there's a limit to how much you can speculate
10 about how much someone could pay particularly in a,
11 quote/unquote, but-for world." But on the other hand, I'm not
12 sure how much your clients are going to plead poverty and how
13 they're going to do that in such a way that the plaintiffs'
14 expert would be able to come back and say, "Well, they've said
15 these five things. I think these five things are not reasonable
16 and so here's why."

17 And so it makes sense to me for us to look at this
18 testimony after the trial briefs and even potentially the
19 exhibits because I'm willing to put some limits on the testimony
20 for both of the Davises, but I don't know exactly what the case
21 will look like come -- I mean, obviously I know the general
22 approaches you all will take.

23 But, Mr. Yates, your thoughts about that?

24 MR. YATES: I would be fine waiting until after the
25 trial briefs, Your Honor. I think that the key thing for us is

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1 that Mr. Guy Davis is a rebuttal witness, if anything. And so
2 if Your Honor wants to wait and see what our case looks like and
3 then decide if Mr. Guy Davis is a proper rebuttal witness, that
4 would be fine.

5 I do think there's some fundamental flaws in what he's
6 done. I don't think an accounting expert gets to change the
7 real-world facts that happened before the class period, which is
8 what he does to try to say that Zuffa could have paid hundreds
9 of millions of dollars more.

10 But, you know, I think that Your Honor could probably
11 better evaluate that in the context of, you know, what is
12 happening, what do the trial briefs look like, what do the
13 exhibits look, as Your Honor has suggested.

14 THE COURT: Okay. Mr. Cramer?

15 MR. CRAMER: Your Honor, may I address that?

16 THE COURT: Yes.

17 MR. CRAMER: We do not view Mr. Guy Davis as solely a
18 rebuttal witness, and here's why. Because Zuffa is going to
19 cross Dr. Singer and Dr. Zimbalist in our case and raise these
20 issues about ability to pay. Dr. Singer has his own answer to
21 these questions. Dr. Zimbalist has his own answer to these
22 questions. But if Zuffa is going to put the capacity to pay at
23 issue in our case, we should be able, in our case, and not wait
24 until after Zuffa's case to address this issue. If Zuffa's
25 going to argue --

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1 THE COURT: Well, I --

2 MR. CRAMER: -- they just couldn't have paid the
3 fighters \$900 million --

4 THE COURT: Well, Mr. Cramer, I think part of the issue
5 is there's a difference between the capacity to pay and some of
6 the scenarios that Guy Davis lays out. And so I think you could
7 talk about how much money was paid out in dividends, how much
8 money was borrowed, in your case that makes money potentially
9 available. But then he has very specific -- and these models
10 essentially that are scenarios, which I think are -- from my
11 perspective the defendant's strenuous objection is not only to
12 those, but it is most strenuously to those, which I can
13 understand, because they require a lot of hypotheticals which
14 you're trying to anticipate as relates to what they're going to
15 say.

16 MR. CRAMER: Well, the point of those, Your Honor, the
17 point of those hypotheticals is to just to have an accountant, a
18 forensic accountant, who studies the valuation of business be
19 able to respond to the argument that they could not have paid
20 the fighters what they -- our economists say they would have had
21 to pay to compete. And in order to do that, you have to look at
22 what actually happened.

23 So what actually happened was they took out huge loans
24 with debt service. They paid that to three people, \$1.2
25 billion, paid it out to the three shareholders, the Fertittas

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1 and Dana White. And then they said, "We don't have it." And
2 their argument is we don't have any money.

3 So an accountant, a forensic accountant, is going to
4 have to say, "Well, what" -- if they had to, as our economists
5 say, pay the fighters \$900 million more, could they have? Well,
6 sure, they could have. And he goes through and shows that if
7 they did not take this big loan and they did not pay out their
8 dividends and they made other financial decisions, like not
9 spend hundreds of millions of dollars on excess aviation and
10 excess management fees, of course they could have.

11 And the point that Guy Davis is making is not that they
12 would have, not that they made bad decisions at the time; it's
13 just that they could have. It's probative of what they would
14 have if our economists are right that the UFC would have had to
15 pay hundreds of millions of dollars more to their fighters in a
16 competitive environment.

17 So the -- an accountant is going to have to be able to
18 figure out looking at this company, "All right. There's this
19 period of time UFC is saying there is no way we could have paid
20 the fighters" --

21 THE COURT: So, Mr. Cramer, Mr. Cramer, Mr. Cramer, I
22 get that point.

23 MR. CRAMER: Okay.

24 THE COURT: And I understand that. So here's what --
25 so we don't have to go back and forth right now. Here's what I

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1 think we should do. I'm going to deny the motion to exclude
2 without prejudice. Then the defendants can reraise it as a
3 motion in limine, Mr. Yates, because I need to see how your case
4 is going to come in and I need to see the exhibits and I need
5 you all to be able to reference them. I'm going to set a day or
6 two where we're going to go through all of the motions in
7 limine, and that will be the time when I decide Mr. Davis -- the
8 Davises' testimony.

9 I certainly think portions of it I think are clearly
10 admissible and can come in, but I think as we start to get into
11 the speculative aspects of that testimony, Mr. Cramer, I'm going
12 to want to hear more from both you and the defendants about
13 that. But I don't think we can figure that out now because I
14 haven't seen your case. We are simply going to go back and
15 forth, and I don't think that will be particularly productive.

16 So for now what I'm going to do is I'm going to deny
17 the motion to exclude without prejudice to it being raised as a
18 motion in limine because I do find generally that the
19 methodology is reliable, but as it relates to the speculation as
20 to the modeling, I will allow you, Mr. Yates and Mr. Williams,
21 or whoever is going to be arguing that to raise that with me
22 when we get closer to the trial date.

23 MR. YATES: Thank you, Your Honor.

24 THE COURT: All right.

25 MR. CRAMER: Thank you, Your Honor.

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1 THE COURT: Okay. So, now, let's talk about the trial
2 date.

3 The trial will -- I'm going to ask you all your view
4 about a couple of things. One is the start of the trial will
5 have to be moved back probably a week to the 15th, but we could
6 pick the jury on the Monday and Tuesday the prior week. But
7 then I would be unavailable the Wednesday, Thursday, Friday. Or
8 we could just start on the 15th, which may make more sense. I
9 don't know if you all have a view about that one way or the
10 other.

11 But the other question I have is, what are we thinking
12 about the length of the trial? Mr. Cramer?

13 MR. CRAMER: We initially had said four to five weeks.
14 And while we don't know how long the defense case would be, we
15 think it could get done in four weeks.

16 THE COURT: Okay.

17 MR. WILLIAMS: Your Honor, there may be some rare
18 agreement here. We think four weeks as well. Three to four,
19 but let's just say four.

20 THE COURT: Okay. Okay. That's helpful.

21 So I think it may make sense just to start on the 15th,
22 and then we don't have to break it up and have the jurors have
23 three days off. So I'm looking at a start date for April 15th
24 for four weeks. And I didn't approve the stipulated schedule
25 only because I wanted to check with you all to see if there's

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1 anything else we needed to do, but I think that what I want you
2 all to do would be to get-together and submit a proposed
3 schedule, consistent with what you've done previously. But now
4 that you've seen my rulings on the MSJ and how I want to
5 approach the Davis testimony, we may need to fold in a date for
6 a hearing, but we can figure that out.

7 But I don't find the proposed schedule that you all
8 presented to be unreasonable, but I wanted to wait to approve
9 anything until we had our discussion here today.

10 Mr. Cramer, anything thoughts about that?

11 MR. CRAMER: Thank you, Your Honor. Mr. Springmeyer
12 was going to address some of those issues.

13 THE COURT: Okay.

14 MR. SPRINGMEYER: Your Honor, if you have the time and
15 interest, we had some thoughts to discuss with you about the
16 jurors and how that's going to work.

17 THE COURT: Sure.

18 MR. SPRINGMEYER: If I might start with our request
19 that the Court exercise its discretion to use a juror
20 questionnaire in this case. And a couple of the reasons, one I
21 discussed briefly with Mr. Williams, you know, if it turns out
22 when we all show up here that half of the venire worked for
23 Zuffa, that would not be a good thing to find out the day we're
24 all starting, or worked for Station Casinos, which might be even
25 more likely. That could cut both ways.

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1 So we ask for a juror questionnaire. We'd be, of
2 course, expecting to work with the defense in a meet-and-confer
3 style to design one unless --

4 THE COURT: That seems fine, I mean, unless there's an
5 objection. I think juror questionnaires work well for both
6 sides and can streamline voir dire. So I'm fine if the parties
7 agree.

8 Mr. Williams, Mr. Yates, any objection to that?

9 MR. WILLIAMS: Your Honor, Mr. Springmeyer brought it
10 up this morning before court for the first time. We have been
11 thinking about it on our side, but I don't think had committed
12 to it. But I hear what the Court is saying, and obviously we
13 can work with opposing counsel on the issue.

14 THE COURT: I mean, my experience is if you all work
15 well together, then it can in fact streamline the jurors that we
16 call in, right.

17 MR. WILLIAMS: Right.

18 THE COURT: I mean, if we have someone who's an avid,
19 whatever, UFC fan or someone, you know, who's the opposite of
20 that, right, getting some information about views or getting
21 some information about someone who might have actually,
22 whatever, buys tickets every year, whatever you all want to ask.
23 I could see there would be ways where we might find some people
24 to be potentially excludable or at least you all would want
25 information about them that would allow for the voir dire to be

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1 less extensive in person.

2 MR. WILLIAMS: Your Honor, do you have a sense on
3 timing of when that would need to be done for the Court's staff
4 in order to get that out in sufficient time --

5 THE COURT: I will check now that you're saying that to
6 me, but I would imagine typically we would need at least seven
7 weeks because we would send it out -- the way we would do it we
8 probably would send it out with the pool when it's selected
9 because we have to send out for a special pool for this length
10 of a jury. So I would say six weeks. So around the end of
11 February we'd have to have the questions.

12 MR. SPRINGMEYER: Okay. And, Your Honor, do we
13 implement that by filing a proposed questionnaire with the
14 Court?

15 THE COURT: So you all should meet and confer. If
16 there are issues, then we will discuss them. What I would
17 anticipate in this case is we'll probably have various status
18 checks over the course of the next few weeks before the trial to
19 address issues so that we don't have them all stacked up at the
20 end. And so we can have a, sort of, status check as it relates
21 to, sort of, jury selection and that sort of thing.

22 MR. SPRINGMEYER: Okay.

23 THE COURT: I mean, there are going to be other issues
24 which I want you all to address as relates to, for example,
25 depositions, and there's going to be issues about coverage and

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1 media and other things that we're going to need to, sort of,
2 work out ahead of time just to -- so everyone's on the same page
3 and so we can coordinate with court staff here, so ...

4 MR. SPRINGMEYER: Understood. And what is -- what size
5 venire is the Court contemplating for this case?

6 THE COURT: Well, I would say for this length of a
7 trial, I would most likely pick eight jurors and four alternates
8 who would all sit because I just don't want to -- one, we don't
9 want to be retrying it. I don't want to lose people, but that's
10 about what I'm thinking about. I'll speak with our jury
11 administrator. But that's 12 total, but eight actual jurors and
12 four alternates.

13 MR. SPRINGMEYER: And how would the Court use the
14 alternates if one -- if one is necessary, for example?

15 THE COURT: Well, if something happens to one of the
16 jurors, the alternate just --

17 MR. SPRINGMEYER: Will they sit through the whole trial
18 and --

19 THE COURT: Yes.

20 MR. SPRINGMEYER: -- if no one gets sick, you just
21 dismiss them?

22 THE COURT: No, they're not dismissed because if
23 something happens during the deliberation, right, alternate
24 needs to be brought in. So they're not dismissed, right.
25 They're told to go home, not discuss the case, and be prepared

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1 to come in and deliberate if something happens during the
2 deliberation.

3 MR. SPRINGMEYER: Understand.

4 And for the voir dire process, we've looked at how Your
5 Honor has conducted that in a couple of prior civil jury trials.
6 Is that the way you always do it: You ask some? You let the
7 lawyers ask some? You ask some more?

8 THE COURT: Well, I'll think about it for this case,
9 but typically I let the lawyers ask questions at sidebar of
10 individual jurors, prospective jurors.

11 MR. SPRINGMEYER: But not general questions to the
12 whole --

13 THE COURT: No, that's -- no. So, in other words, if
14 you have general questions you want to be asked, then I'll ask
15 them.

16 MR. SPRINGMEYER: Okay.

17 THE COURT: But then what will happen is we'd bring the
18 jurors over one at a time to the sidebar, and each side gets
19 about four, five minutes to ask that particular juror whatever
20 questions, within the law of course, that they want to ask.

21 MR. SPRINGMEYER: Understand.

22 And three challenges per side?

23 THE COURT: Are you asking for more?

24 MR. SPRINGMEYER: Well, sure.

25 THE COURT: At this point I'm inclined to only give

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1 three. I mean, I think the advantage of the questionnaire is
2 that it, I think, eliminates some of the consternation, I hope,
3 as relates to the challenges because you have so much
4 information.

5 Other questions?

6 MR. SPRINGMEYER: And back and forth on the challenges
7 and if you skip one, you lose it?

8 THE COURT: Yes.

9 MR. SPRINGMEYER: Okay.

10 Brief discussion about motions in limine, not the
11 specific ones, but would Your Honor prefer that they be filed
12 individually or in an omnibus collection by each side?

13 THE COURT: In a case like this, they should be filed
14 categorically, and what I mean by that is this. If there are
15 objections to exhibits, there should be a motion in limine
16 regarding exhibits. If there's objections to, for example,
17 particular, sort of, arguments that are going to be made, that
18 should be filed separately. If there are going to be objections
19 to testimony or form of certain testimony, that should be filed
20 separately. So it should be done categorically.

21 So if you have, for example, you're objecting to expert
22 testimony, then that should be its own motion, right. And if
23 you're objecting to other types of live testimony, that should
24 be its own motion. If you're objecting to exhibits, that should
25 be its own motion. If you have some other legal objection, then

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1 that should be its own motion. So those would be the categories
2 that I would envision, right. And then within there -- within
3 those categories you would address the various issues that you
4 want to have me look at.

5 MR. SPRINGMEYER: That would imply that some of them
6 might be quite a bit longer than some others if it's a --

7 THE COURT: Yes.

8 MR. SPRINGMEYER: -- category that covers multiple
9 things.

10 Any upper page limit for such a collection, other than
11 the normal motion?

12 THE COURT: No, I'm not going to set a page limit only
13 because we're going to have so many exhibits in this case it
14 really doesn't make sense and I couldn't fathom that. I mean,
15 in my experience it actually helps for you all to say more in a
16 motion in limine so that I can make a better decision about it.

17 I will say the one thing that I think that you all
18 should do, which I would encourage you to do, is to file your
19 trial briefs earlier than you've set because the trial briefs
20 help me decide the motions in limine. So they need to be filed
21 in enough time that I can look at the trial briefs, right, ahead
22 of time.

23 So what I want you to do when you meet and confer is to
24 make sure that the trial briefs and the exhibit lists and the
25 witness list and the witness order is filed before the motions

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1 in limine.

2 MR. SPRINGMEYER: Okay.

3 THE COURT: Because, otherwise, I won't really be able
4 to effectively consider them until I see that.

5 MR. SPRINGMEYER: And with regard to the trial briefs,
6 can Your Honor give us a little more idea of what you want in
7 them? For example, an overview of how the parties intend to
8 prove the case or teeing up legal arguments or --

9 THE COURT: So what I would expect is for you to give
10 me a roadmap for how the case will come in.

11 MR. SPRINGMEYER: Okay.

12 THE COURT: Your particular case.

13 MR. SPRINGMEYER: Okay.

14 THE COURT: Right?

15 MR. SPRINGMEYER: Right.

16 THE COURT: And that includes -- again, the trial brief
17 doesn't necessarily have to include the witness order. It's
18 helpful if it does. And you can -- you don't have to summarize
19 every witness's testimony, but you can say, "This is how we
20 expect the testimony to come in. We would start here."

21 Because the other thing is it allows me to be able to
22 decide whether there are some issues that we will decide, which
23 there will be, mid trial or which issues have to be decided
24 ahead of time because that person is going to be testifying at
25 the beginning.

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1 MR. SPRINGMEYER: Yes.

2 THE COURT: So this is a situation where, again, I'm
3 not going to set a page limit. More is better for you, because
4 if I think that you haven't told me enough in your trial briefs,
5 it will be harder for me to understand your perspective. So I
6 don't mind the trial briefs being long, you know, 40 pages, for
7 example, or something like that. I don't mind them being that
8 long because it will help me as I go through the trial and as I
9 decide these issues.

10 And I know judges do things differently, but the trial
11 briefs will be filed publicly. They're not sealed, right.
12 There's not a period where I'm just looking at it and no one
13 else is looking at. So when you file the trial brief, both
14 sides will get them. They'll be filed on the same day, right.

15 MR. SPRINGMEYER: Yes.

16 THE COURT: Same time. And so they'll lay out your
17 respective cases.

18 MR. SPRINGMEYER: Understood.

19 THE COURT: Now, I will say this for the defendant. I
20 would not expect you to always -- well, I shouldn't say
21 "always."

22 I know that there may be things that come in in
23 rebuttal that are not necessarily in the trial brief. So I
24 understand that. But in a case like this one I will say,
25 Mr. Williams, that it doesn't seem like it's much of a secret

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1 how this case is going to come in. So I'm saying that to you
2 because if there's something significant that's going to raise
3 an issue or dispute and I think that it's something you could
4 have reasonably let me know about it, that's going to be an
5 issue.

6 Now, if there's something that you want to share with
7 me that you think is significant impeachment material that you
8 don't feel obligated to share, you can file that under seal and
9 let me know. But the important thing is to let me know before
10 it happens. And you, again, may want to file that under seal on
11 an ex parte basis. I allow the defense to do that with the
12 understanding that I may determine that it should be unsealed.

13 MR. WILLIAMS: Right.

14 THE COURT: But I can understand as a former trial
15 lawyer that there may be times when you want to highlight
16 something for me that you don't want to necessarily share with
17 the other side, and that's fine. I just don't want it to pop up
18 in the midst of my trial when it's something that I think
19 reasonably could have been brought to my attention ahead of
20 time.

21 MR. WILLIAMS: That's helpful, Your Honor.

22 THE COURT: Okay.

23 MR. WILLIAMS: Thank you.

24 THE COURT: Uh-hmm.

25 MR. SPRINGMEYER: Your Honor, with respect to both the

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1 exhibit list and the exhibits themselves, there's going to be
2 hundreds from both sides. So what is the preferred format for
3 us to deliver them to the Court?

4 THE COURT: So, first, let me be clear about this.
5 Joint exhibits -- we should have joint exhibits. I don't want
6 there to be a situation where we've got a defense exhibit that's
7 identical to a plaintiffs' exhibit or vice versa and they have
8 different numbers. That is completely unwieldy. So
9 get-together -- when it comes to exhibits, get-together and
10 figure it out.

11 Now, there may be exhibits where you all have disputes
12 where you say, "We don't think this should be included in the
13 exhibit, this particular attachment." That's fine. But you
14 should also raise that with me at the hearings ahead of time
15 because I may say, "No, that should be included. That will be a
16 joint exhibit, and it's coming in." That way we don't have
17 piece of exhibits.

18 In a case like this, I would imagine that that are a
19 fair number of joint exhibits that will come in, depending upon
20 my rulings, right. There may be some disagreements about
21 deposition excerpts, and we should talk about that. Excuse me.

22 But I would expect there to be joint exhibits, and the
23 plaintiffs' and defendant's exhibits to be only those exhibits
24 where there's no agreement that it will necessarily be used.
25 And we're going to have a whole discussion about, sort of, what

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1 objections are to exhibits. And that way, once I rule on it, it
2 can move from the defense exhibit or the plaintiffs' exhibit
3 category to the joint exhibit category.

4 But the individual exhibits, in terms of it being a
5 plaintiffs' exhibit or defendant's exhibit, should be the
6 exception. That should not be the majority. I would expect you
7 all to work that out ahead of time.

8 MR. SPRINGMEYER: And the delivery to the Court?

9 THE COURT: That should be delivered on a flash drive.

10 MR. SPRINGMEYER: Flash drive. Okay.

11 THE COURT: And one thing I will tell you that happens
12 and I know you all won't do this, but do not send us a PDF that
13 has all of the exhibits in one PDF, right.

14 MR. SPRINGMEYER: Understood.

15 THE COURT: You laugh, but I can tell you that happens.
16 But we're not going -- we're going to send it back to you and
17 say, "Do this again."

18 MR. SPRINGMEYER: Okay.

19 THE COURT: Right. So scan the documents that way.

20 The other thing, I'm sure you've seen the technology.
21 Well, I know you've added Mr. Pomerantz, who's actually local
22 here and tried many cases in this courtroom, as well
23 Mr. Springmeyer, you can come in and test all of the technology.
24 So for those of you who are on the defense side from out of town
25 and from the plaintiffs' side from out of town, I would strongly

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1 encourage you to make an appointment on one of the times that we
2 come back for the hearings, and don't wait until two weeks
3 before trial, to see how your system works. This is going to be
4 a long, involved trial, and it's going to be a lot of exhibits.
5 Then we should figure that out ahead of time.

6 MR. WILLIAMS: Your Honor, who should we -- oh, I'm
7 sorry.

8 (Court conferring with courtroom administrator.)

9 THE COURT: Yes, Mr. Williams.

10 MR. WILLIAMS: I was just going to ask the best way to
11 facilitate that with your staff. Who should we contact and --

12 THE COURT: You should be contacting Ms. Smith, and she
13 will set up a time. I mean, again, ideally it would be for you
14 all to bring some support staff on one of the days we have a
15 hearing ahead of time so they can plug into the system and see,
16 so you all can see, and you can have some idea. But, again,
17 there are monitors there. The exhibits appear there. The
18 exhibits get loaded into the JERS system in the back. So the
19 jurors know how to manage that.

20 If you want to add something to that, then you have to
21 let us know. So, for example, if you want to have an easel or a
22 TV or something where you want it to be closer, right, you want
23 the jurors to see it and not look at their screens, you have to
24 let us know about that ahead of time because I may or may not
25 approve it. In my experience using the monitors and even the

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1 big monitor is sufficient, but if you have a particular or
2 special request, let us know.

3 And I don't know if you have any audio, but the audio
4 should also be tested because of the different levels.

5 MR. SPRINGMEYER: Well, there will be video clips,
6 which will include audio, so yes.

7 THE COURT: So you should test it because what we've
8 had happen is sometimes the internal audio on the clip doesn't
9 play well, and then we're stuck in a situation.

10 MR. SPRINGMEYER: Okay.

11 How does the -- the admitted exhibits go into the jury
12 room at the end?

13 THE COURT: There's a JERS system. There's actually
14 basically a big -- again, we can give you a tour of what it
15 looks like, but there's a system where they get loaded. It
16 takes time for them to get loaded. So what we'll do is we will
17 load them -- well, we can't load them as we go, but we'll have
18 to figure a way to load them so it doesn't take up too much
19 space.

20 But what you should do is, again, on one of the times
21 that you all come back when you do the technology, you can also
22 ask for us to give you a little demonstration in the back of the
23 JERS system.

24 MR. SPRINGMEYER: Very good.

25 Will Your Honor allow witness binders?

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1 THE COURT: I really prefer not to have paper,
2 particularly in a case this size. Now, you should have binders
3 as a backup. So that being said, there may be reasons why. But
4 that's why I want you to come in, Mr. Springmeyer, and test the
5 equipment. Because if we have binders, then, you know, it's
6 very unwieldy. So you can have them as a backup, but the
7 preferred method for showing the exhibits to the witness will be
8 through the screens.

9 MR. SPRINGMEYER: I was thinking more, Your Honor, in
10 some cases we've provided the jurors with a binder that has a
11 slip sheet with a head shot of the witness, and they can take
12 notes on the page. And then -- then the next page has the other
13 witness, and that way it helps them keep track of who's who.

14 THE COURT: I have to think about that. I'm not sure
15 about that. I mean, they'll have notebooks and we can talk
16 about whether or not if you all want to have, you know, a face
17 book with different -- I'm just saying if you want to have as an
18 exhibit like a picture of faces, it may make sense to do that
19 with names. We can talk about that as an exhibit potentially.
20 I'll consider that. But they will -- they can take notes.

21 MR. SPRINGMEYER: Okay.

22 THE COURT: And I'm not going to do it in this case,
23 but in some cases I've actually allowed the jurors to ask
24 questions of witnesses. I am going to think about that for this
25 particular case. I haven't decided about that yet, but that's

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1 something I've done before which I'm contemplating here.

2 So the way that works is -- so if I decide to do it,
3 what will happen is after the end of each witness's testimony,
4 the jurors can write down questions and they hand it up to me.
5 And then I decide if the question's appropriate or not, and then
6 I'd read it. And then the witness can answer, and then each
7 side gets to follow-up based upon the answers to the questions.

8 MR. SPRINGMEYER: Understood.

9 THE COURT: I have not decided yet whether or not to do
10 that in this case, but that is something that I'm thinking about
11 doing as well.

12 MR. SPRINGMEYER: Regarding witnesses who -- for
13 example, if the plaintiffs call a witness as an adverse witness,
14 does all of the testimony of that witness have to come in in
15 that session or is it the plaintiffs' session and then the
16 defense can call them again in their case? One up, one down, or
17 all at once, like?

18 THE COURT: I typically prefer for it all to happen at
19 once. However, again, if the defense has reasons for not doing
20 that, Mr. Williams and Mr. Yates, you should let me know. But,
21 generally speaking, I would expect that the defense would also
22 use that witness's time at the same time. So if they're -- for
23 example, if they're an adverse witness called by the plaintiffs
24 and there's an area of the cross-examination of that witness
25 that's not covered, if the witness was going to be then

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1 identified as a defense witness, the defense can then move into
2 other areas that were not the subject of cross-examination.

3 MR. SPRINGMEYER: And relating to that would be
4 witnesses who are essentially testifying by a video clip.
5 Should both sides' video clips be played the first time the
6 witness is called?

7 THE COURT: Video clips, deposition designations, at
8 one time, right. We don't do it back and forth in the cases.
9 So the testimony comes in at one time.

10 Do we expect a fair amount of deposition designation
11 testimony?

12 MR. SPRINGMEYER: Yes.

13 THE COURT: Okay. Well, we'll have to --

14 MR. SPRINGMEYER: Both deposition testimony and video
15 clips of depositions and other video clips.

16 THE COURT: Okay. All right.

17 MR. SPRINGMEYER: Does the Court want --

18 MR. CRAMER: Can I just ask a clarifying questioning
19 about the deposition, the witness by deposition?

20 So is Your Honor saying that when a deposition is shown
21 to the jury, the way Your Honor prefers it is that it's
22 chronological throughout the deposition so the jury does not
23 know whether this is a plaintiff designation or a defendant
24 designation?

25 THE COURT: The testimony would come in in the order in

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1 which it appears in the deposition transcript.

2 MR. CRAMER: Thank you.

3 THE COURT: Right. And, again, you all know the rules
4 as relates to deposition excerpts coming in, but if they are
5 witnesses who are available, then we're going to have a
6 discussion about that as well depending upon what the agreement
7 is as relates to the witness. But we'll get to that, too.

8 Go ahead, Mr. Springmeyer.

9 MR. SPRINGMEYER: Regarding things such as business
10 records and hearsay objections, I take it Your Honor wants to
11 resolve all of that as possible ahead of time through motions in
12 limine or otherwise.

13 THE COURT: Are we really going to have objections to
14 business records in this case? Because, that, I would find to
15 be, sort of, shocking if there were such objections depending
16 upon -- I mean, maybe there might be a few, but maybe there's
17 some hearsay in the business records, which is different.

18 But do we anticipate there being objections to
19 authenticity as relates to business records in this case?

20 MR. SPRINGMEYER: I hope not, Your Honor, but we
21 haven't exchanged exhibit lists yet and we haven't argued about
22 them between us so --

23 THE COURT: Okay. So when that comes up, we'll deal
24 with that. I really don't want to have, and we have enough
25 time, custodians coming in here to testify about exhibits that

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1 we all understand are actually business records and are
2 authenticated.

3 MR. SPRINGMEYER: Sure, produced by a party and Bates
4 stamped and all of --

5 THE COURT: Well, just because it's produced by a party
6 doesn't necessarily mean that it's necessarily accurate. So I
7 appreciate that.

8 MR. SPRINGMEYER: No.

9 THE COURT: There can be objections. I'm not saying a
10 party shouldn't object, but what I'm saying is that,
11 particularly when it comes to business records, you all are very
12 seasoned lawyers. I would be shocked if we were having
13 objections to those types of records rather than relevance or
14 other types of objections like hearsay.

15 Is that your list? Are you done?

16 Well, no, that's helpful because, again, we get these
17 things out of the way ahead of time.

18 MR. SPRINGMEYER: The more we know the better we can
19 make it go smoothly for Your Honor, too, so ...

20 THE COURT: Okay. All right.

21 Mr. Williams, I saw you stand up a few times. So I
22 want to give you an opportunity to be able -- I don't know if
23 you have a list of your own.

24 MR. WILLIAMS: Your Honor, I stood up and then was able
25 to sit down because you answered the question and so that was

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1 helpful. The only thing I had is, and I appreciate
2 Mr. Springmeyer going through his questions, I anticipate the
3 parties will have other ones that they think of, you know, at a
4 point in time that's before our next status check is scheduled
5 or something like that. Is the best way to get answers to those
6 questions to submit them through Ms. Smith? I'm not looking to
7 bother the Court or its staff, but to the extent that these
8 things come up, is there a way you prefer we handle those?

9 THE COURT: Can you give me an example of what you
10 mean? And then I can give you a more direct answer. Because if
11 it requires back and forth in terms of argument, then that
12 should wait.

13 MR. WILLIAMS: No, no, no.

14 THE COURT: If it's about procedures and practices, for
15 example, then you can simply e-mail -- as long as you're copying
16 opposing counsel, you can simply e-mail my chambers, e-mail
17 Ms. Smith, and we will respond to that.

18 MR. WILLIAMS: That's fine. I was talking about the
19 latter, so that's helpful. Thank you.

20 THE COURT: Okay. Is there anything else that we need
21 to address today?

22 MR. CRAMER: I don't think so, Your Honor. Thank you.

23 MR. WILLIAMS: I think we're good, Judge. Thanks.

24 THE COURT: Well, hold on. Let me look at my list.

25 (Court conferring with law clerk.)

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1 THE COURT: Are there any other outstanding motions? I
2 think we have one motion to withdraw that I haven't ruled on and
3 the unrelated matter regarding representation of class members.
4 Is there anything else? Any other outstanding motion? I'm
5 trying to go through my list. I don't think there is anything
6 else that I see.

7 MR. YATES: Your Honor, just on the class notice, I
8 think our -- we need -- we're going to be responding I think on
9 Monday. We're meeting and conferring with plaintiffs' counsel
10 about whether or not the class notice needs to be amended in
11 light of the fact that the notice says the plaintiffs were
12 seeking injunctive relief, and they on December 22nd decided not
13 to pursue injunctive relief in this case.

14 THE COURT: Okay. And that's a good question.

15 Mr. Cramer?

16 MR. CRAMER: Our view is that the law does not require
17 to amend the notice every time something changes in a case like
18 that. Secondly, most of the members of the Le class are retired
19 so it's not necessarily a salient issue for them. Thirdly,
20 we're seeking injunctive relief as -- we're part of a related
21 case, the Johnson case, and that injunctive relief would be on
22 behalf of -- you know, we would try to reform the contracts and
23 provisions in general and, thus, would help the Le fighters.

24 We do not think it's necessary or advisable to send out
25 an amended notice. It would cause confusion among class

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1 members. So far I think -- I think the opt-out deadline is
2 Monday. We've received very little reaction to the notice.

3 So our view is that that is not required, not
4 advisable, or not appropriate.

5 THE COURT: I would tend to agree with that, Mr. Yates.
6 Unless there's something more substantive than just the change
7 of relief, I think filing an amended notice at this time would
8 be confusing and unnecessary, but if there are other objections
9 you had, you can let me know.

10 MR. YATES: We will do so, Your Honor. I don't agree
11 obviously with Mr. Cramer's take on the law. I respect Your
12 Honor's comments and will take them into account, but we'd be --
13 we'll probably file something --

14 THE COURT: That's fine. You're free to file
15 something. I can take a look at it in more depth when that
16 happens.

17 MR. YATES: I appreciate that. Thank you.

18 MR. CRAMER: Thank you, Your Honor.

19 THE COURT: Okay. I think that we are done, if there's
20 nothing else. So we'll be adjourned on this case. Thank you
21 all. Have a good weekend. Safe travels.

22 (Whereupon the proceeding concluded at 9:06 a.m.)
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24
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COURT REPORTER'S CERTIFICATE

I, PATRICIA L. GANCI, Official Court Reporter, United States District Court, District of Nevada, Las Vegas, Nevada, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Date: January 19, 2024.

/s/ Patricia L. Ganci

Patricia L. Ganci, RMR, CRR